

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 03 KATHMANDU 000654

SIPDIS

SENSITIVE

STATE FOR G/TIP, G, INL, DRL, PRM, IWI, SA/RA, SA/INS
STATE ALSO PLEASE PASS USAID
LONDON FOR POL/GURNEY, NSC FOR MILLARD

E.O 12958: N/A

TAGS: [KCRM](#) [PHUM](#) [KWMN](#) [PREF](#) [ELAB](#) [NP](#)

SUBJECT: THE LEGAL ENVIRONMENT IN NEPAL FOR TRAFFICKING IN PERSONS

REF:

1. Summary. Existing legislation governing human trafficking in Nepal provides severe punishments for traffickers and their associates and shifts the burden of proof, in many cases, to the accused rather than the victim. Draft legislation that would address victim rights and protections expired after the dissolution of Parliament in May 2002. The current laws have several shortcomings, mostly related to the treatment of victims, while the legal process usually involves lengthy delays with opportunities for the accused to use bribery and threats to forestall prosecution. In the Nepali year 2002/2003, only 19 percent of prosecutions resulted in convictions, down from 26 percent the year before. Reporting of cases to the police also declined to 40 cases in 2002/2003 from 92 cases and 125 cases the two preceding years. In March, two incidents were reported in the media of former and current policemen involved in prostitution rings, but details remain unknown. End Summary.

Existing Laws Against Trafficking

2. Anti-trafficking legislation in Nepal has a long history. Human trafficking was first declared an offense by King Rana Bahadur Shah in the year 1749 and was codified into law in 1853. The current laws governing trafficking are a chapter on "Trafficking in Human Beings" in the 1963 Country Code and the 1986 Human Trafficking (Control) Act.

3. According to national law, trafficking is defined as

"An act of selling human beings with any motive, to take away any person abroad with intent to sell, to compel any woman to engage in prostitution through allurement or enticement, deceit, threat, intimidation, pressure or otherwise, and to hatch a conspiracy for committing any of these acts, or to assist in or abet such acts, or attempt to engage therein."

Punishments under the law are strong and delineated as follows.

-- Traffickers may be punished with 10 to 20 years imprisonment.

-- Any person who takes another person outside the country with the intention of selling that person may be imprisoned from 5 to 10 years.

-- Any person compelling any woman to engage in prostitution may be imprisoned from 10 to 15 years.

-- A person who conspires in trafficking may be imprisoned for up to 5 years.

4. Another strength of the 1986 legislation is its extra-territorial application. Even a person who has committed a punishable act under the law outside Nepal can be prosecuted and punished as if s/he had committed the crime in Nepal. However, the existing extradition treaty between Nepal and India, the primary destination, does not include human traffickers, effectively nullifying the extraterritorial provision. The law also shifts the burden of proof to the accused in cases involving cross-border operations. However, if the accused is a guardian or relative, the burden of proof remains on the victim.

Draft Legislation

5. In 2001, the draft Trafficking in Human Beings (Control) Bill was submitted to Nepal's Parliament. The bill had passed through committee and was ready for a floor vote when the Parliament was dissolved in May 2002. Civil society organizations and the Ministry of Women, Children and Social

Welfare anticipate the bill will be resubmitted once a national parliament is re-elected. Unfortunately, the ongoing Maoist insurgency and political impasse between the King and political parties have prevented rescheduling national elections.

16. If enacted, the new law would provide stronger protection for trafficking victims, which is neglected under current law. The draft bill protects the victim's privacy through prohibiting the media from publishing information relating to the victim without his or her consent; allowing for in-camera hearings at the victim's request; and determining that the victim need not reconfirm his or her statement in court after s/he has given it in the first instance. The victims are also granted the right to act in self-defense even if the trafficker is injured or killed in such an act. The bill also mandates creation of a "rehabilitation fund" and establishment of rehabilitation centers.

----- Shortcomings in the Law and Legal Process -----

17. Most criticisms of the current law involve the lack of protection for trafficking victims and the gender bias of the law towards women and girls. Victims are required to be present at all court hearings involving their case, making it difficult to resume a normal life during the 2-3 year-long judicial process. The law also fails to criminalize the act of purchasing a human. Others in Nepali civil society have commented that the law takes a moralistic approach to trafficking, and government authorities often treat victims poorly, contributing to social stigmatization of the victims.

18. Still others are critical of the legal process, which provides many opportunities for the accused to use bribery and intimidation to forestall prosecution. The Nepal Police are the first actors in the enforcement process. To initiate an investigation, the victim must file a First Information Report (FIR) with the police. Subsequently, the police must obtain permission from the nearest district court to initiate an investigation. Unfortunately, in many districts, the Women and Children Police Service Center, which is empowered to handle these cases, lacks the resources (e.g., vehicle or means of communication) to file a case quickly. The district headquarters -- and the court -- can sometimes be several days away by foot. Police cannot collect physical evidence, which in many instances is time-sensitive and critical to successful prosecution, without first reaching -- and obtaining permission from -- the court. Moreover, anecdotal evidence suggests that both the police and court officials can be subject to bribery and threats from the accused.

19. Once the court grants permission, the police officer investigates the crime under the direction of a public prosecutor appointed by the Office of the Attorney General. Inadequate police training on how to conduct a criminal investigation may contribute significantly to the low success rate of prosecutions against traffickers in Nepal. The public prosecutor is authorized to direct the investigator; file charge-sheets with supporting evidences; and oversee witness testimony to the police. After a charge-sheet is filed in the court, the court records the statement of the accused and the lawyers of both parties begin pleading the case. The investigation and prosecution of a case typically lasts between 2-3 years.

----- Low Conviction and Reporting Rates -----

10. Considering the delays and hurdles in investigating and prosecuting trafficking cases, it is unsurprising that the success rate of convictions for the Nepali year running from April 2002 - April 2003 was only 19 percent. Out of 142 cases completed in 2002/2003, only 19 cases were considered "successful" with 11 cases considered "partially successful." In most cases, partial success implies that the case involved more than one accused, but not all were convicted.

11. The lengthy legal process and the requirement that victims be present in all hearings contribute also to a low reporting rate. The Maoist insurgency has led the police to withdraw from most rural areas, making it more difficult for victims to file cases and participate in the judicial process. In 2002/2003, only 40 cases were filed with the police, down from 92 cases and 125 cases the preceding two years. In the same period, between 200-300 women and children were rescued from trafficking situations, including nearly 100 from brothels in India.

----- Police Involvement in Prostitution? -----

¶12. Although two recent press reports indicate corrupt involvement of the police with prostitution activities in Nepal, there is no evidence linking police with trafficking. On March 15, a former Assistant Sub-Inspector of Police was arrested for running a prostitution ring in Kathmandu. The media also reported, on March 16, that three police constables were arrested on charges of looting and kidnapping a restaurant owner at the behest of Deepak Chitrakar, owner of the Friendship Dance Restaurant in Kathmandu. [Note. "Dance restaurants" are a kind of indigenous nightclub and hostess bar where female employees often are encouraged to engage in off-site prostitution. End Note.] Post will seek further information on these cases and the possible involvement of police corruption in prostitution.

Comment: The Way Forward

¶13. Trafficking of women and children will continue to plague Nepal until the underlying causes of illiteracy, insecurity, extreme poverty and social/cultural values degrading the status of women are addressed over the long term. The absence of a sitting parliament also prevents the passage of new legislation to improve victims' rights and protections. However, a stronger legal environment, through enhanced capacity of the police and increased coordination between law enforcement agencies, might deter traffickers from operating in Nepal. Post looks forward to initiating an INL-funded program this year that will assist in this effort. End Comment.